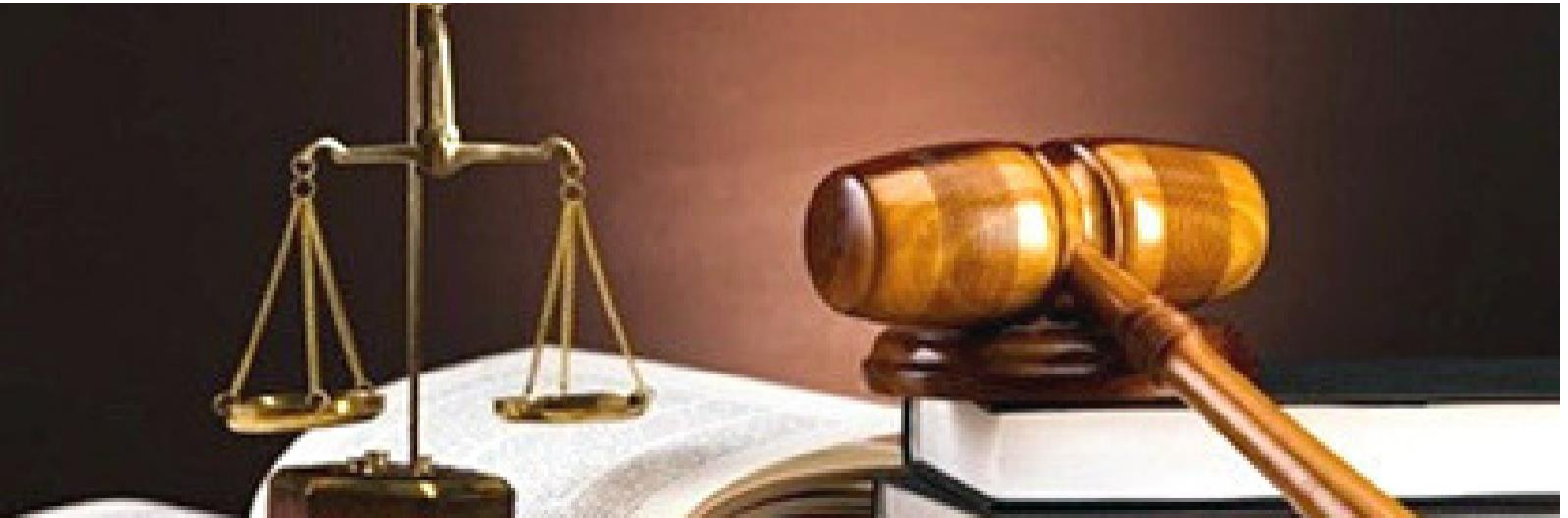


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Sagar Sharma & Anr. vs. Phoenix ARC Pvt. Ltd. & Anr.

Brief Facts

The NCLAT while dealing with limitation on section 7 application dealt with the commencement of the Code as the relevant trigger date and further put the petition under Article 62 considering that there was a deed of mortgage which was executed between the parties in this case. Hence the present appeal.

Decision

- a. Citing the Supreme Court case of B.K. Educational Services Pvt. Ltd. vs. Parag Gupta it was held that the commencement of the Code on 01.12.2016 is wholly irrelevant to the triggering of any limitation period for the purposes of the Code. **[Para 1 & 3]**

b. An application under Section 7 of the Code does not purport to be an application to enforce any mortgage liability. It is an application made by a FC stating that a default, as defined under the Code, has been made, which default amounts to Rs. 1,00,000/- or more which then triggers the application of the Code on settled principles that have been laid down by several judgments of this Court thus it will be governed by Article 137 of the Limitation act and not article 162. **[Para 2 & 3]**

Link of the Order

<https://ibbi.gov.in/uploads/order/f20674d09e65a0cbd694fbb4d13cb754.pdf>



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